



THE CITY OF NEW YORK  
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May 31, 2023

***Via ECF***

Hon. Ramon E. Reyes, Jr.  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *The City of New York v. Old Dominion Tobacco Company, Inc.*  
20 Civ. 5965 (ENV-RER) (E.D.N.Y.)

Dear Judge Reyes:

I write in response to the letter submitted by counsel for Atlantic Dominion earlier today. Atlantic Dominion submitted its letter without any attempt to reach agreement on the form of the joint status report due today.

Over the past months, the City has endeavored to respond to a myriad of questions and concerns Atlantic Dominion's counsel has raised regarding the City's privilege and redaction logs and their contents. Though we disagree with Atlantic Dominion's arguments regarding privilege, the City has sought to resolve the outstanding disputes without unnecessary motion practice. To that end, the City has been engaged in extensive re-review of the material included on its privilege and redaction logs and has also performed additional searches for materials requested by counsel for Atlantic Dominion, producing additional materials as well as requested metadata. The City has also committed to producing all of the documents previously on the City's redaction log in full, without redactions. Atlantic Dominion is aware of our commitment to produce the previously redacted documents without redactions and while there have been technical issues with the re-production we are working with our e-discovery team and it will be made shortly.

As we have mentioned to opposing counsel, however, our office is currently experiencing significant resource issues resulting from immediate litigation needs arising from New York City's migrant crisis.

In addition, each time we have produced additional documents or provided information to respond to Atlantic Dominion's questions, we have been met only with additional

letters demanding further information and claiming that the materials provided establish that the City must have other relevant information that is being withheld. We do not understand these claims.

Since Atlantic Dominion had previously suggested a stay of all discovery pending the resolution of its motion to dismiss, we suggested earlier today that a temporary stay might be efficient and appropriate at this stage and given the resource issues mentioned above. Atlantic Dominion indicated that it would oppose any stay of document discovery at this time. In the absence of a discovery stay, we would suggest that the utility of the meet-and-confer process has been exhausted at this point with respect to Atlantic Dominion's concerns about the City's privilege logs and that it should be permitted to make a motion, should it wish to do so. Similarly, the City should be permitted to make a motion regarding Atlantic Dominion's refusal to produce electronic sales records generated from its Turning Point system reflecting sales to the six retailers at issue. The City does not waive any right to pursue further discovery or engage in additional motion practice after a decision is issued on Atlantic Dominion's motion to dismiss.

Respectfully submitted,

/s/  
Krista Friedrich

cc: All counsel of record (via ECF)